

Serial No.: 10/725,747

REMARKS/ARGUMENTS

This response is timely filed as it is filed within the ONE (1) month shortened statutory period for response to the outstanding Office Action.

No additional claim fee is believed to be due because neither the total number of pending claims nor the number of independent claims is believed to exceed the total number and the number of independent claims, respectively, for which fees have previously been paid. If, however, it is determined that such a fee is properly due as a result of this communication, the Commissioner is hereby authorized to charge payment of such fees or credit any overpayment, associated with this communication, to Deposit Account 19-3550.

Claims 1-28 remain in the application.

Elections/Restrictions

The Office Action states that restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15 and 21-28, drawn to an igniter composition, classified in class 149, subclass 19.4.
- II. Claims 16-20, drawn to method of making a foamed igniter composition, classified in class 149, subclass 109.6.

Serial No.: 10/725,747

The Action alleges that the inventions are distinct from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by mixing and drying. It is unclear why Applicant contends that the igniter composition is not a product claim.

The invention of Group I (i.e., claims 1-15 and 21-28) directed to an igniter composition is elected with traverse.

As a preliminary matter, it is respectfully submitted that the Action has misidentified the subject matter and/or nature of the claims. Inventions I and II are **NOT** related as a process of making and product made as has been alleged in the Action. Claims 1-11 and 21-28 (the claims the Action identified as constituting Invention I) are directed to an igniter composition and claims 16-20 (the claims the Action identified as constituting Invention II) are directed to a method of making a foamed igniter substance, thus neither Invention I nor Invention II constitute product claims.

Moreover, the claimed “method of making a foamed igniter substance” is **NOT** a method of making a method of making the claimed “igniter **composition**.”

Serial No.: 10/725,747

Attention is also directed to MPEP §2112.01 entitled, “Composition, Product, and Apparatus Claims”. Clearly, if the MPEP considered composition claims to be product claims, then composition claims would not be separately listed in such an MPEP heading.

5 Further with regard to the Examiner’s statement that it is unclear why applicant contends that the igniter composition is not a product claim, it is respectfully submitted that what is unclear is why the Examiner states the claims of Invention I are “drawn to an igniter composition and uses” and then contends that “Inventions I and II are related as process of making and product made.” (Emphasis added.)

10 The claims of Invention I are directed to a composition. The claims of Invention I are NOT directed a process or the product made by a process.

While product-by-process claims have long been recognized, the undersigned is not familiar with “composition-by-process claims.”

15 Should the Examiner maintain a position that Invention I is a “process of making” or even that Invention I is directed to “product made” by the process of Invention II, the Examiner is requested to specifically identify express support for such position.

20 Moreover, while the Action states that “In the instant case, the product can be made by mixing and drying” no import appears attachable thereto as no process of making the claimed composition has been claimed.

Serial No.: 10/725,747

As the Action has failed to properly identify a basis for restriction between Invention I and Invention II, the required restriction therebetween is unsupported. In view thereof, the withdrawal of such restriction is requested and notification to that effect is solicited.

5 The Action has further required, for either Group elected, under 35 U.S.C. 121 the election of a single disclosed species based on the igniter composition. "Applicant must elect one of the fluoropolymer binder oxidant, plasticizer, metal fuel, blowing agent, and crosslinking agent [] for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held
10 allowable. Currently, no claims appear to be generic."

The following elections, with traverse, are made in response to this election of species requirement:

15	fluoropolymer binder oxidant	=	dipolymers of vinylidene fluoride hexafluoropropene (previously elected)
	plasticizer	=	polytrifluorochloroethylene;
	metal fuel	=	magnesium;
	blowing agent	=	p-toluene sulfonyl semicarbazide; and
20	crosslinking agent	=	trimethylolpropane trimethacrylate and benzoyl peroxide (i.e., bi-functional crosslinking agent = trimethylolpropane trimethacrylate and peroxide crosslinking agent = benzoyl peroxide)
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Serial No.: 10/725,747

Of the above elected claims 1-15 and 21-28 (the claims the Action identified as constituting invention I), each of claims 1-15 and 21-28 is believed to be readable on the so-elected invention species. Moreover, of the above elected claims 1-15 and 21-28 (the claims the Action identified as constituting invention I), at least
5 claims 1, 2, 12-15 and 21 are believed to be generic relative to the designated composition species (including the previously elected binder, i.e., dipolymers of vinylidene fluoride and hexafluoropropene) and thus constitute a basis for traversal from the assertion in the Action that “no claims appears generic.”

In addition, each of claims 16-20 is also believed to be readable on the
10 elected compositional species. In addition, each of claims 12-20 is also believed to be generic relative to the species based on the igniter composition.

The Action has further required, if Group I is elected, under 35 U.S.C. 121 the election of a single disclosed species based on the use of the igniter composition stating, “Applicant must elect one of the hybrid gas storage container,
15 shaped foam igniter, damper pad, or igniter stick”.

In response to such election requirement, the damper pad is elected with traverse.

Of the above elected claims 1-15 and 21-28 (the claims the Action identified as constituting invention I), each of claims 1-11, 14 and 21-28 is believed
20 to be readable on the so-elected invention species. Moreover, at least claims 1-11 and

Serial No.: 10/725,747

21-28 are believed to be generic relative to the uses of the igniter composition and thus constitute a basis for traversal from the assertion in the Action that "no claim appears generic."

In addition, each of claims 16-20 is also believed to be readable on the elected use species. In addition, each of claims 12-20 is also believed to be generic relative to the species based on the uses of the igniter composition.

Conclusion

It is believed that the above elections are properly responsive to the requirements contained in the Action and that the application is in condition for substantive examination. Should the Examiner detect any issue or have any question, the Examiner is kindly requested to contact the undersigned by telephone at the (847) 490-1400, in an effort to expedite examination of the application.

Respectfully submitted,



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